

PA-ABP-532
1991/10/19

**Private Business
Organizations
and the
Legislative
Process**

GEMINI Working Paper No. 40

GEMINI

**GROWTH and EQUITY through MICROENTERPRISE INVESTMENTS and INSTITUTIONS
7250 Woodmont Avenue, Suite 200, Bethesda, Maryland 20814**

**DEVELOPMENT ALTERNATIVES, INC. • Michigan State University • ACCION International •
Management Systems International, Inc. • Opportunity International • Technoserve • World Education**

Private Business Organizations and the Legislative Process

by

Thomas A. Gray

Development Alternatives, Inc.

June 1993

This work was supported by the U.S. Agency for International Development, Office of Small, Micro, and Informal Enterprise, through core funding to the Growth and Equity through Microenterprise Investments and Institutions (GEMINI) Project, contract number DHR-5448-C-00-9080-00.

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER ONE	
INTRODUCTION	
	1
SMALL BUSINESS AS A SPECIAL INTEREST	1
MAKING SAUSAGE AND MAKING LEGISLATION	2
CHAPTER TWO	
ORGANIZING SMALL BUSINESSES	
	5
FACTORS THAT MAKE IT DIFFICULT TO ORGANIZE SMALL BUSINESSES	5
The Independence of Small Business Owners	5
The Size Distribution of Firms by Industry	5
Free Riders	6
Transaction Costs	6
The Influence of Geography	7
TYPES OF BUSINESS ORGANIZATIONS	8
Selected Small Business Organizations	8
National Organizations, or Organizations with a National Impact	10
CHAPTER THREE	
SMALL BUSINESSES AND THE LEGISLATIVE PROCESS	
	15
INTRODUCTION OF A BILL	15
THE BILL'S PATH THROUGH COMMITTEES AND SUBCOMMITTEES	16
CHAPTER FOUR	
OPPORTUNITIES FOR SMALL BUSINESSES	
TO INFLUENCE LEGISLATION: A CASE STUDY	
	19
THE INITIAL RESPONSE TO THE ANNOUNCEMENTS	19
STRATEGIC ISSUES	20
SUBCOMMITTEE HEARINGS	20
HOW THE EXECUTIVE BRANCH AFFECTS PROPOSED LEGISLATION	21
INFORMING SMALL BUSINESSES	22
HEARINGS	22
SUBCOMMITTEE VOTE	23
FULL COMMITTEE DELIBERATIONS	24

PREPARING FOR THE FINAL VOTE	24
THE CONFERENCE COMMITTEE	25
CHAPTER FIVE	
SOME COMMENTS ON THE PROCESS	27
CHAPTER SIX	
INFLUENCING THE REGULATORY PROCESS	29
THE ADMINISTRATIVE PROCEDURES ACT	29
THE REGULATORY FLEXIBILITY ACT	29
CHAPTER SEVEN	
CONCLUSIONS	33
REGULATORY CAPTURE	33
SPECIAL TREATMENT	34

LIST OF TABLES

<u>Table</u>		<u>Page</u>
1	Representative Small Business Organizations by Type of Service	9
2	SME Organizations Active at the National Level	11

ACKNOWLEDGMENTS

The author wishes to thank Connie Dunham of A.I.D./PRE/SMIE and Matt Gamser of Development Alternatives, Inc. for their helpful comments on an earlier draft. The opinions expressed here are those of the author and do not necessarily reflect the views of the Agency for International Development.

CHAPTER ONE

INTRODUCTION

In the United States, there is a general belief that small businesses are important contributors to the general welfare. Despite this belief, the owners of small and medium enterprises (SMEs) are often harmed by legislation passed by the Congress. Even when the legislation passed by the Congress does not harm SMEs, the implementing regulations issued by the executive branch of the Government may do serious harm to the competitive ability of small businesses. Why does so much legislation and regulation prove harmful to SMEs, when legislators and government officials apparently have no intent to harm SMEs? Part of the answer lies in the complexity of the issues faced by the Congress, and the complexity of the legislation that attempts to deal with serious and related social problems.

In a democratic society, it is assumed that the various personal, social, or business interests that may be affected by a proposed piece of legislation will defend their interests by providing information to their representatives in the legislature. This assumption fails to take account of the costs associated with organizing interest groups. If the group to be organized has many members, and the possible loss to each member of the group is small, the costs of organization may be greater than the perceived benefit to each member of the group. If members of the group are injured frequently enough, the cumulative burden of legislation-induced losses may generate sufficient energy to produce more effective group representation.

This paper asks how SMEs in the United States organize themselves to protect their interest before the federal government. The paper concludes that there is no standard form of organization, because a variety of organizations appear to be effective representatives in different parts of the United States and in different industries. Some organizations of SMEs appear to be more effective before state and local governments, whereas others focus more on national issues. Many SME organizations offer members a range of services, of which lobbying and representation activities are only a small part. Competition among organizations seeking larger membership bases appears to lead to better and more creative services, including more effective lobbying. At the national level, the ability of disparate small business organizations to work together by forming effective coalitions produces effective lobbying for SMEs. In the end, it is the nature of the issue before the Congress that determines the shape of the SME coalition that best represents the interests of those small businesses affected by the issue.

SMALL BUSINESS AS A SPECIAL INTEREST

To defend their interests, small business owners act like other special interest groups. Some small business owners are active in the legislative process, informing their elected representatives about the effects of proposed legislation, providing facts, statistics, and economic arguments to support the small business position. When elections are held, some small business owners actively support legislative candidates pledged to support small business. Business owners can provide funds to support these candidates, and can volunteer their time to help selected candidates present their case to the voting public.

One problem that makes it difficult for small business owners to communicate with their representatives is that small businesses do not form a monolithic group. With the exception of tax policy, on which small businesses are united in favoring lower taxes (or at least opposing higher taxes), most

suggested legislation and most regulations proposed to implement newly passed legislation are favorable to some small businesses and unfavorable to others. For example, if the legislature decides that a particular form of air pollution must be reduced, some small businesses will be forced to purchase new antipollution equipment or hire specialized companies to help them control emissions of the controlled substance. The small firms purchasing the new equipment and related services will be against the law because it will cost them money. The small firms producing the antipollution equipment and providing the necessary services to help lower pollution will be for the legislation, which will increase the demand for their goods and services. Many small businesses will be unaffected by the law, and will have no interest in discussions related to it. Understandably, legislators may become confused when two groups of small businesses ask for support on different sides of the same issue.

MAKING SAUSAGE AND MAKING LEGISLATION

This example illustrates the truth of an old saying that "There are two things one should never watch being made: sausage and legislation." This saying does not suggest that either sausage or legislation is a bad thing. The saying points out that the process for producing each thing combines many ingredients, some of which we might feel better about if we did not know they were in the recipe. When asked what cuts of meat go into sausage, the butcher always mentions the prime cuts, not the scraps and much of the fat from the pig or the cow that are also included. Similarly, when asked why he or she supports a particular piece of legislation, a legislator is likely to cite broad arguments related to the public good. The legislator is unlikely to tell you that, in this case, because he or she does not know which side has the better argument, he or she is taking sides with the group or industry that has provided more support during the election process. The resulting sausage and the resulting legislation may be good, but they might have been better if we knew exactly how they were made, and if we could have influenced the butcher to cut the fat content, and the legislator to think more of the general interest of the whole society as opposed to the narrow interest of one group of businesses.

The democratic process may not be perfect, but as Sir Winston Churchill said:

Many forms of government have been tried and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.¹

Chapter Two of this paper looks at the factors that determine how small businesses organize themselves to represent their interests not only at the national level, but also at the state and local levels. The section deals briefly with the question of free riders — firms that want representation but only if others pay for it — and with the question of transactions costs — the costs associated with recruiting and communicating with members or potential members.

Chapter Three outlines the legislative process in the U.S. Congress, describing the hearing process before committees and subcommittees of the legislature, and providing some detail about how the legislative calendar is controlled. The purpose of this chapter is to give the reader an initial understanding of the opportunities small business owners or SME organizations have to comment on or influence the legislative debate.

¹ Speech to the British House of Commons, November 11, 1947.

Chapter Four provides a lengthy example of the passage of a bill, in this case a piece of environmental legislation that potentially affects many SMEs. The bill is proposed by a group of environmental activists who care strongly about curbing pollution in the United States. Many small business owners support such legislation, and the issue in this example is not the merits of the legislation per se, but the difficulties in making the legislation effective in terms of its stated goals without imposing excessive costs on the small businesses that must comply with the law. Extensive discussion, several votes, and much voter education and coalition building will be needed before the issue is dealt with effectively.

Chapter Four also highlights the role of federal agencies in influencing the legislative process. Federal bureaucrats are forbidden by law from lobbying Congress in favor of legislation.² Federal bureaucrats can provide information in support of the legislative process, however, and the example shows the role of the Chief Counsel for Advocacy, the U.S. Small Business Administration official who acts as an in-house government advocate for SMEs. The Chief Counsel does not take a position against the bill, but does suggest several ways in which the legislation can be improved to be effective without imposing excessive costs.

Chapter Five steps back from the detail of the example cited above to identify the basic activities that take place as SME owners and SME organizations struggle to develop and advocate an effective position on the substance of the legislation. The chapter concludes that the individual activities that make up the lobbying process are both easy to understand and relatively easy to accomplish. What is difficult about representing small business interests is the coordination among the many SME organizations, the government agencies involved in the debate, and the legislature. Many strategic decisions are required to maximize the effectiveness of the SME position. A great deal of work and time are devoted to educating all parties to the debate, and this educational effort must be organized and delivered on a schedule that maximizes the return to SMEs. If effective leadership is not developed early in the lobbying campaign, small business may end up having little effect on the proposed legislation.

Chapter Six assumes that the bill discussed in Chapter Four has become law. The Environmental Protection Agency (EPA) must now develop and implement regulations to carry out the intent of the law. The regulations may have a large effect on the real burden imposed on small business by the law. Fortunately, regulations must be developed under rules prescribed by the Administrative Procedures Act. This act ensures ample opportunity for SMEs to provide effective written input to the EPA. The process followed by the EPA in developing final regulations is outlined in some detail.

Chapter Seven draws some conclusions from the subjects discussed in the paper. The primary conclusion is that the SME owner must be an informed and active citizen, willing to participate in the process of representing SME interests, and willing to take at least an occasional leadership position on a legislative issue.

² About 600 senior officials, nominated by the President and confirmed by the Senate, are exempt from this prohibition. They may present the position of the President on any proposed piece of legislation.

CHAPTER TWO

ORGANIZING SMALL BUSINESSES

How do small business owners come together to form organizations that can support their interests in the legislative arena? The question might appear simple, but numerous factors complicate the task of organizing SMEs.³

FACTORS THAT MAKE IT DIFFICULT TO ORGANIZE SMALL BUSINESSES

The Independence of Small Business Owners

Organizing small businesses is difficult for several reasons. By definition SMEs are independent businesses, almost always closely held, with ownership by a single owner or by a family. Many SME owners have gone into business because they prefer to work for themselves, rather than taking orders from someone else. Individuals that place this kind of value on being independent are difficult to organize into any kind of group. Many American SME owners resist belonging to organizations of any kind.

The Size Distribution of Firms by Industry

Organizing along industry lines is harder than might be expected because many industries are populated with both small and large firms. When the large firms are active, they often control the industry organization, which consequently may not represent small business interests very well. Additionally, trade and industry associations are completely independent of the federal government and of state and local governments in the United States. Members of SME organizations join on a voluntary basis, and continue to pay dues only as long as the organization convinces them that membership benefits are worth the membership fee. This pattern differs from the socialist model in which the industry organization is often sponsored or supported by the government, and membership is mandated by law. It also differs from the model found in a number of Western countries, in which all businesses are required to belong to an industry chamber or to a national chamber.

Most small business owners in the United States operate in competitive markets. Similarly, most organizations that represent small businesses operate in competitive markets, and each organization must compete by offering bundles of services that convince small firms to join on a dues-paying basis. Competition among organizations leads to innovative services and to higher quality of service to small business members. Lobbying, or representing SME interests, is one of the services provided by most

³ The terms "small businesses" and "small and medium enterprises" will be used almost interchangeably in this paper. In the United States, small businesses have from 1 to 99 employees, and medium-sized businesses have from 100 to 499 employees. Generally, we will include both small and medium-sized businesses in the term "small businesses" or in the term "small business." In most of Europe, the term SME or small and medium enterprise generally refers to firms with 1 to 299 employees (sometimes 1 to 199), although the definition may differ by industry.

small business organizations. Other services include the provision of publications that provide technical advice and information, sponsorship of training activities and conferences, and sponsorship of health or life insurance programs. Most organizations provide a variety of services, and almost all organizations lobby at some time before local, state, or national governments.

Free Riders

Many small business organizations organized geographically are successful in representing all of the smaller businesses within their geographic area but are not able to attract more than a small minority of the total business population. This problem is caused partly by free riders. Suppose that you approach me with a membership brochure promising to represent my interests before the state legislature and state and local governments. Even if I am strongly interested in your proposition, I may be reluctant to let you know of my interest. Why? If my fellow business people sign up in sufficient numbers and pay dues that enable the organization to accomplish its mission, then I will be represented even though I have not joined or paid dues. Because it is difficult to exclude nonmembers from receiving the benefits, some business owners will hide their degree of interest and hope that the organization is successful because of the actions of others.⁴ This basic problem has hindered the development of broad-scale small business organizations.

Transaction Costs

Another major difficulty in organizing small businesses is the large transaction cost associated with communicating to any group made up of millions of independent members. Large businesses with more than 500 employees are easy to organize because only about 15,000 businesses rank in this size group. They are almost all joint stock firms that are publicly traded, and therefore, subject to registration with federal authorities. The registration is public information, and the address of the large firms can be obtained easily.⁵ With smaller firms, it is difficult to obtain a complete listing, and almost

⁴ This free-rider problem is found throughout economics, whenever there is difficulty in excluding nonparticipants from receiving benefits. In the case of national defense, for example, some taxpayers will not volunteer how much they are willing to pay for defense, because they are hopeful that the remainder of their fellow citizens will voluntarily produce enough revenue to pay for sufficient defense. Governments deal with this by enforcing a tax policy that makes everyone pay something towards the defense effort. Private organizations do not have this option. They can do several things to increase membership, however, including more intensive recruiting of potential members, and bundling of other benefits along with their representational activities. See the discussion of Councils of Smaller Businesses.

⁵ Not surprisingly, large business interests are well represented through a variety of organizations. Several thousand large American businesses belong to the Conference Board, a research organization that conducts research on many of the problems facing larger businesses. This organization does no lobbying itself, but provides its members with quality information that helps them lobby on their own, or through industry associations or ad hoc committees. A European affiliate of the Conference Board has membership made up primarily of large, multinational firms.

impossible, with the frequent entry and exit of small firms, to keep a list up-to-date.⁶ Because federal authorities provide no name or address listing of small and medium-sized firms, listings must be obtained from private providers.⁷ Listings are expensive to buy, but this expense is small relative to the cost of mailing to millions of businesses. Once a small business has become a member of an organization, mailing costs can be obtained from membership dues. Mailing to potential members can be prohibitively expensive, however, and high mailing costs partly explain why many organizations are organized geographically, so that other methods of contact, including advertising, can be used more effectively.

The Influence of Geography

Geographic factors have a large influence on the manner in which small businesses organize to protect their political and economic interests. The American population is spread across a very large geographic area, with approximately 80 percent of the population located in urban or suburban areas. The remaining 20 percent of the population are found in small towns and villages. Approximately 91 percent of small enterprises are found in urban or suburban areas. Population is dense along the Eastern coast from Boston to Norfolk, Virginia, and along the California coast from San Francisco to San Diego. The population of the country is slowly shifting toward the South and the West, taking advantage of slightly warmer weather and less expensive land.

Where population is dense and travel times are relatively small (less than two hours between major cities), small businesses appear to organize along regional or state lines. For example, in New England, where there are six small states, small firms are organized into the Small Business Association of New England (SBANE), rather than into six separate state organizations. The membership of SBANE consists primarily of larger small businesses, with a more-than-proportionate number of manufacturing enterprises among the membership. Total membership is relatively small compared to the number of small businesses in the region, but SBANE effectively represents all of the businesses in New England on issues that come before the U.S. Congress or the federal bureaucracy. SBANE also provides expert testimony before the six state legislatures in New England, and may testify on issues under discussion

⁶ It is estimated that the typical private business listing deteriorates at the rate of approximately one percent per month due to the closure of firms, or to the movement of firms. The typical listing is usually about a year out of date when first published, so that 10 to 12 percent of the names on the list will not be usable.

⁷ Federal authorities do maintain two listings of all businesses in the United States. One listing, called the Business Master File, is prepared by the Internal Revenue Service and includes all businesses filing business tax returns. The second listing, the Standard Statistical Establishment List, is compiled by the Bureau of the Census, using the Business Master File as a base, and used by the Census Bureau as a sampling frame for statistical purposes. Both agencies are forbidden by law to provide the address of any business contained in their listings.

in major cities throughout the region.⁸ In the Midwest, a region made up of six large states (Ohio, Indiana, Michigan, Illinois, Wisconsin, and Minnesota), organizing on a regional basis has proven impossible because of the great distance between large cities. Each of these six states has large rural areas with rich farmland where farmers raise large crops of corn, wheat, soy beans, hogs, and cattle. Despite the predominance of rural land, each state has one or more major cities, and the majority of the population lives in the cities. Wisconsin, which has a number of medium-sized cities, was the first Midwestern state in which small businesses successfully organized into an association, the Independent Business Association of Wisconsin (IBAW). IBAW has been successful over the last 30 years in attracting members from throughout the state and from all industries. IBAW, like SBANE, has earned a reputation for effectively representing the interests of all the small businesses in the state. IBAW represents small business members (and nonmembers) before the state and federal government.

TYPES OF BUSINESS ORGANIZATIONS

The factors outlined above produce a variety of small business organizations, organized differently and offering different combinations of services. Organizations committed solely to lobbying and organizations committed solely to providing nonlobbying services are equally rare. Most organizations provide a combination of lobbying and other services that meet a variety of member demands. Examples of representative organizations are provided in Table 1. The organizations are categorized by type of service offered and by level of government lobbied. Although the table is broken into cells, it is best to think of the organizations on a continuum, from purely lobbying to purely nonlobbying. Although thousands of organizations lie along this continuum, only a few of the better-known, representative organizations are discussed here. Individual organizations generally work by themselves, but also form permanent or short-term coalitions with other organizations as the need arises. Independent organizations form coalitions that allow them to work effectively at the national level, even though most of the organizations are local or statewide in nature.

Selected Small Business Organizations

Two organizations, one regional (SBANE) and one statewide (IBAW), have been described above. Three other organizations, the Independent Business Owners of Illinois (IBOI), the Council of Smaller Enterprises (COSE), and the Smaller Manufacturers Council (SMC) are described briefly below. Both COSE, representing the Cleveland metropolitan area, and SMC, representing Pittsburgh, are examples of successful SME organizations that flourish in competition with local Chambers of Commerce, which generally focus more on large business concerns.

⁸ Strictly speaking, because there are no regional governments in the United States, you would not expect to find small businesses organizing on a multistate basis unless they were planning to organize in response to national legislation and regulation. But states and cities compete to provide the most favorable business climate to attract business, and neighboring states often have similar laws affecting small business interests. If the geography is appropriate, multistate organization does occur, even when the focus of the lobbying is the at state or local level. A prime example of this would be the Metropolitan Washington Board of Trade, which represents businesses in Northern Virginia, Southern Maryland, and the District of Columbia, all of which are part of the Washington Metro Area.

TABLE 1
 REPRESENTATIVE SMALL BUSINESS ORGANIZATIONS BY TYPE OF SERVICE

TYPE OF SERVICE/LEVEL OF ORGANIZATION ¹	PURE LOBBY ²	MIXED LOBBY-OTHER MEMBER SERVICES	MEMBER SERVICES OTHER THAN LOBBYING
NATIONAL	National Federation of Independent Business	National Chamber of Commerce, National Small Business United, Small Business Legislative Conference	
REGIONAL		Small Business Association of New England, Regional Trade or Industry Associations	
STATE	Independent Business Owners of Wisconsin, Independent Business Owners of Illinois	State Chambers of Commerce, Most other state organizations representing small businesses	
LOCAL (LARGE CITY)		Local Chambers of Commerce, Smaller Manufacturers Council (Pittsburgh), Council of Smaller Enterprises (Cleveland)	Price Club, other business buying clubs
LOCAL (SMALL CITY)		Local Chambers of Commerce	

¹ Numerous organizations claim to represent small business but provide only services on which they receive some kind of independent profit. Many of these organizations exist primarily to sell insurance policies of one kind or another. I have listed a new innovation, buying clubs that are open to both small businesses and to individual consumers. These buying clubs, such as the Price Club, stock many items used by small businesses, eliminating the need for small businesses to keep large quantities of these items in stock. These clubs maintain special hours for small business purchasers.

² Other than the National Federation of Independent Business, there are few purely lobbying organizations. The Independent Business Owners of Wisconsin (and Illinois), although presented as purely lobbying associations, probably provide other informational services to members. Most organizations fall into the central column because they provide a mix of services.

Independent Business Association of Illinois

Business owners in other Midwestern states have attempted to organize themselves along the lines of IBAW. Business owners in Illinois were successful, and formed the Independent Business Association of Illinois. The organization flourished for a short period, but has not been as successful as the original Wisconsin model. The distribution of population in Illinois, dominated by the Chicago area with few other large or medium-size cities, may have contributed to the difficulties encountered in organizing SMEs in the rural areas of the state. The population of Wisconsin is located primarily in numerous midsized cities, in which it may be easier to organize small businesses.

Council of Smaller Enterprises

Another successful small business organization from the Midwest demonstrates that organization within a major metropolitan area may be a key to success. COSE was founded to provide a variety of services to businesses in the Cleveland, Ohio, metropolitan area. Cleveland is a major city in Ohio, with a metropolitan area population of approximately 1,500,000. From the start, COSE has focused on providing services such as health insurance to its members.⁹ The COSE staff has also been active in representing small business interests before Cleveland area local governments. The organization has also sponsored a variety of training and education programs for owners of Cleveland businesses.

Smaller Manufacturers Council

The city of Pittsburgh, Pennsylvania, is close to Cleveland, both geographically and in terms of having a strong local business organization. SMC was founded to support the interest of the many small manufacturing firms in the greater Pittsburgh area. Pittsburgh was at one time the center of the U.S. steel and coal industries. These industries supported the development of numerous related metal-working industries. The SMC was developed partly to provide a means for networking among Pittsburgh area companies, partly to provide joint services such as education and training, and partly to represent Pittsburgh manufacturing businesses in relation to local, state, and federal government requirements. The SMC has long been involved in regulatory issues dealing with the environment, for example.

National Organizations, or Organizations with a National Impact

Four major SME organizations have a major effect on legislation at the national level. It is interesting to note that each of the four organizations is organized in a different manner, and uses different instruments and arrangements to maximize its effectiveness in representing SME interests. The fact that each of the organizations is organized differently makes it difficult to predict what type of organization is best, a priori.

The National Federation of Independent Business

Only one nationwide organization is made up solely of small business owners. This group, the National Federation of Independent Business (NFIB), was organized in California 50 years ago to represent small businesses in Southern California. Through the years, the NFIB has developed a nationwide sales organization, with more than 500 full-time employees selling memberships. NFIB active membership has grown to approximately 600,000 members spread across all 50 states. The NFIB is the only small business lobbying organization active in all 50 state capitals and in Washington, D.C. The NFIB represents itself only as a lobbying organization, and does not attempt to provide a broad range of supporting benefits. It asks member business owners to pay an annual fee, proportional to the strength of their interest in the support of small business. In addition to the large sales staff, membership dues support an additional 400 employees who monitor and attempt to influence the progress of business-

⁹ This service is of critical importance to many small businesses, because health insurance costs per worker may be as much as 20 percent higher for small companies than for large companies. The COSE health insurance plan has lowered costs for many small businesses in the Cleveland area, and has been a major recruiting tool to encourage membership in COSE.

TABLE 2

SME ORGANIZATIONS ACTIVE AT THE NATIONAL LEVEL

NAME OF ORGANIZATION	BRIEF DESCRIPTION OF ORGANIZATION
National Federation of Independent Business	Headquartered in Nashville, Tennessee, with large lobby office in Washington, D.C. Six hundred thousand members support active lobbyists in all 50 state capitals. Largest of the four organizations, and the only organization whose membership is restricted to SMEs.
National Small Business United	Members are other small business organizations such as SBANE, SMC, and COSE. Publishes an annual <i>Washington Briefing</i> , which is highly respected. Headquartered in Washington, D.C.
The Small Business Legislative Conference	Membership consists of approximately 150 trade associations with large, small business memberships. Headquartered in Washington, D.C.
The Chamber of Commerce	Independent chambers are located in many cities, each of the 50 states, and in Washington, D.C. Membership consists of large businesses and SMEs. Lower-level chambers can choose to join higher-level chambers. At the national level, the Chamber is usually dominated by large business interests, although most of the members are SMEs.

oriented legislation in all of the states and in Washington. The NFIB also sponsors a research foundation that conducts research on regulatory, tax, and financial issues of interest to small businesses throughout the country.¹⁰

National Small Business United

COSE and SMC were among the founders of one of the most successful small business lobby groups, National Small Business United (NSBU). The NSBU is headquartered in Washington, D.C. and serves as an umbrella lobbying organization representing the interests of the small business members of a number of local, state, and regional organizations including COSE, SMC, IBAW, AND SBANE. In the spring of each year the NSBU sponsors a Washington Briefing. Officers and other members of constituent organizations come to Washington to participate in a series of briefings for members of

¹⁰ For example, the NFIB Foundation has recently published studies of relationships between small businesses and banks in the United States, Canada, and Great Britain. The Foundation has also recently updated a survey of small business problems, with tax and regulatory issues representing most of the high-ranked issues. Other recent studies have covered subjects such as the tax burden on business in the 50 largest cities in the United States. The Foundation publishes a quarterly survey of small business owners' expectations and performance with respect to output change, hiring, investment, finance, and other issues.

Congress interested in small business issues. Obviously, the briefings would be of great interest to members of the House and Senate Small Business Committees, but other Senators and Representatives may also be interested.

After the formal briefings, constituents from the NSBU member organizations hold individual or small group meetings with the Senators or Representatives from their geographic areas, or with the Senators or Representatives whom they know on a more personal basis. The purpose of these follow-up meetings is to reinforce the image of small business to members of Congress, and to highlight issues affecting small business that may be coming before the Congress during the current session. NSBU staff and representatives from the constituent organizations are well organized and knowledgeable in the issues they bring to the Congress. Consequently, the Washington Briefing is well attended by legislators and serves as a good tool for highlighting the general interests of the small business community.

The Small Business Legislative Conference

The Small Business Legislative Conference is another umbrella organization created by members of approximately 30 trade associations in the mid-1970s in response to major tax and antitrust issues affecting large numbers of small businesses. The coalition was brought together under the leadership of the National Small Business Association (NSBA), a small business organization with members from a number of states. Although the NSBA had attracted a large number of small business members relative to other organizations, it did not represent more than a fraction of small business owners. In attempting to deal with two broad antitrust and tax issues, NSBA brought together representatives from a number of trade associations that represented industries heavily populated by small businesses. This coalition worked effectively at the outset, and NSBA continued to hold the coalition together through 1985 under the title of the Small Business Legislative Conference (SBLC). In 1986, the SBLC became a separately chartered lobby organization, independent of NSBA, with a separate Washington staff.

Since 1985, the SBLC has grown to a membership of approximately 100 trade associations, each of which has a sizable proportion of small business members. Because the active members of the organization are trade association executives, the issues selected for action by the SBLC are often industry related.¹¹ The 20 or so issues selected by the SBLC for active lobbying must have the agreement of a majority of the member organizations. Agreement can be achieved relatively easily because many industry-specific issues may have potential effects on other industries or businesses.

One reason for the continued success of the SBLC, in addition to the obvious point that it is successfully representing the legislative interests of its members, is that the trade association members had no other organization, other than the Chamber of Commerce, that could serve as an umbrella organization for trade associations with strong small business interests.

¹¹ The terms "trade" association or "industry" association are used interchangeably throughout this paper. In either instance, the association represents small or large businesses that are identified with a particular industry. There are approximately 4,000 such groups in the United States, and some industries are represented by more than one association in competition with other similar organizations. Many trade or industry associations may have a geographic component — that is, their members are from one industry within a specified geographic area of the country.

The Chamber of Commerce

The Chamber of Commerce is a potent defender of business interests in many countries. In some countries, membership in a Chamber is mandated by the government, and every business in an industry must belong to an industry chamber. The industry chambers all belong to a national chamber and the government relates to the national chamber when it seeks business input to legislative or regulatory issues.

In other countries, the Chamber of Commerce is organized privately, and not on industry lines. The chamber is still a monolithic organization, however, representing both small and large business interests. As might be expected, the interests of small and large members frequently conflict.¹² Many such chambers are controlled by the larger businesses, which may pay a majority of the dues income to the chamber or may be organized more effectively to control the organization. Small business issues are often not carried forward by the chamber in these cases, and the focus is on large business policy issues.

In the United States, the Chamber of Commerce is organized in three tiers. At the local level, individual chambers are chartered in many cities and towns. Each of these chambers acts individually to represent the interests of local business members to local governments. In small or medium-sized cities, almost all members of the chamber are small businesses, and the chambers focus on small business issues when lobbying local or state governments.¹³ Each state also has a statewide Chamber of Commerce, organized to represent business interests before the state legislature and the state government. The state chamber is supported by funds provided by the local chambers. Finally, at the national level, there is a U.S. Chamber of Commerce, also supported by dues payments.¹⁴

The U.S. Chamber of Commerce represents business interests in the broadest sense, attempting to serve the needs of all businesses across the wide spectrum of issues, national and international, that may affect business welfare. In many cases it appears that the policy position of the U.S. Chamber of Commerce is determined by large business members. Other organizations representing small business interests often find themselves in opposition to the position taken by the U.S. Chamber of Commerce. At the local level, the Chamber of Commerce is almost always a supporter of the small business position on a given issue; at the state or national level, the chamber is much less likely to be sympathetic to small business interests. Larger businesses could be expected to influence national decisions more decisively because their operations have a more national scope. The result is that the U.S. Chamber of Commerce

¹² There is a saying in the United States that "What's good for General Motors (the largest automobile manufacturer in the United States) is good for everyone." But this thought is frequently wrong; what is good for the large automobile manufacturer may be bad for the small automotive repair shop. Small and large businesses are frequently diametrically opposed on important legislative and regulatory issues.

¹³ If there is a dominant large business in town, it may act as an opinion leader, working closely with small and medium-sized enterprises on many business issues. This is generally not the case at the state or national level.

¹⁴ Local chambers of commerce may join the state chamber or the national chamber, paying membership dues similar to any other private company. There is no requirement, however, that a local chamber be a member of the state chamber, or that a state chamber be a member of the national Chamber of Commerce. In most states, local chambers do belong to the state chamber, but smaller chambers probably do not belong to the national chamber. Larger chambers, representing businesses in larger cities, are generally members of both the state and national chambers.

is sometimes a supporter of small business, and sometimes not. For the most part, small businesses or the organizations representing small businesses remain completely independent of the U.S. Chamber and often find themselves at odds with it on particular legislative or regulatory issues.

The attention paid to each of the large organizations above should not obscure the fact that they will often work together in a coalition to maximize their effectiveness. Because they are organized differently, however, and because their memberships are not completely overlapping and have different opinions on some issues, they may differ with each other on a particular issue. There is frequent comment in the media about the lack of coordination among the four large small business organizations. The comments reflect a lack of understanding on the part of those in the media that small business is not a monolithic group whose interests are simply and clearly defined.

CHAPTER THREE

SMALL BUSINESSES AND THE LEGISLATIVE PROCESS

This chapter briefly outlines the process by which a new law is introduced, considered, and voted on in the U.S. Congress. The discussion is complex but also somewhat simplified, because the consideration of any proposal before the Congress is subject to parliamentary rules of debate. The critical issue for small businesses regarding the process outlined here is a strategic issue: When and how can small businesses intervene to affect the legislation being considered by the Congress? A related strategic issue is whom do they approach in the Congress (and also outside of the Congress) to present the small business position most effectively. Key intervention points will be suggested at the end of the chapter. The strategic issues related to intervention on behalf of small business interests will be discussed more completely in Chapter Four, through a lengthy example.

Small business lobbyists must be constantly aware that they are operating in a world of conflicting ideas and differing points of view about what is desirable in a given situation. Effective lobbying ultimately means the provision of information and reasoned argument about the probable effects of a proposed piece of legislation. Information and argument offered on behalf of small businesses will compete with information offered by lobbyists on the other side of the issue in question. Competition keeps the lobbying process honest and effective; lobbyists who provide incorrect numbers or poorly organized arguments will lose credibility quickly.

INTRODUCTION OF A BILL

Bills are often written by the staff of a particular member of Congress or by staff assigned to one of the committees of either house.¹⁵ Small business organizations may help write the legislation or may provide input about the problem with which the legislation is attempting to deal. Legislation may also be drafted in an executive agency and forwarded to congressional leadership for submission as a bill.¹⁶

¹⁵ Both the Senate and the House of Representatives are referred to as houses of Congress. Both the Senate and the House maintain standing committees. These committees deal with major issue areas such as energy, environment, the raising of funds, government operations, foreign relations, labor, health, and the like. Both houses maintain committees on small business. Any committee may have subcommittees dealing with more specialized areas within a major issue area. The Senate Committee on Labor and Human Resources, for example, has subcommittees on aging, education, arts and the humanities, the handicapped, health and scientific research, employment, poverty and migratory labor, child and human development, and alcoholism and drug abuse.

¹⁶ Any legislation proposed by an executive branch agency must be cleared through the Executive Office of the President and will not be forwarded to the Congress unless the President's staff concur with the bill. The committees in the Congress are chaired by legislators from the majority party. If the President is from the same party, the bill is forwarded to the committee chairperson for submittal as a bill. If the President is from the minority party, the bill is forwarded to the ranking minority member of the committee for submittal.

Laws are passed by the U.S. Congress, consisting of a Senate with 100 members, two from each state, and a House of Representatives with 435 members, assigned to states in proportion to the states' populations. To become a law, a bill must be approved by both the House and the Senate, and must be signed by the President.¹⁷ The President has the right to veto the bill, and the Congress may attempt to override the veto. The Congress may defeat the veto by a two-thirds vote of both houses.

Once the bill has been passed and signed by the President, the law must be implemented by the executive branch, headed by the President. Generally speaking, implementation of a law means that one or more federal agencies or departments must write implementing regulations. These regulations have the force of law, and are the rules that businesses must follow to comply with the law. If small businesses have been unsuccessful in influencing the content of a bill before it becomes law, they may still have a strong influence on the nature of the implementing regulations.¹⁸

THE BILL'S PATH THROUGH COMMITTEES AND SUBCOMMITTEES

Bills are generally referred by the Speaker of the House or by the Senate Majority Leader to the committee with appropriate jurisdiction over the subject matter addressed in the bill. The bill is then further assigned to the subcommittee with most direct jurisdiction over the subject matter. The bill must be considered by and voted out of subcommittee before it can go to the whole committee. Similarly, the whole committee must consider the bill and vote to pass it on to the House (if it is a bill originated in the House) or to the Senate (if the bill originated in the Senate). In considering whether to forward a bill for further consideration, either the subcommittee or the full committee may hold hearings.

Hearings provide an opportunity for witnesses to come forward with testimony for or against the bill. In some cases the committee (subcommittee) issues a call for witnesses. In other cases, the staff invite selected witnesses to testify. Witnesses are often selected by the majority staff to support the position taken by the majority party.¹⁹ The minority staff and minority party members on the committee work to ensure that appropriate opposing positions are represented on the witness list. If the committee staff do their work properly, and if the committee (subcommittee) chairperson is fair-minded, then

¹⁷ A bill is a proposed law, submitted by one or more members of the Congress, for consideration in the Congress. Bills may be introduced in either house, but any bill dealing with the raising of revenue must be introduced in the House of Representatives. Bills with similar or identical content may be proposed simultaneously in both houses of Congress. Although a bill is generally introduced or sponsored by one member of Congress, the sponsor may ask for cosponsors to place their names on the bill. Popular bills may have several hundred cosponsors.

¹⁸ The development of implementing regulations will be discussed in some detail in Chapter Six.

¹⁹ With very minor or occasional exceptions, the United States follows a two-party system, and elected members of the Congress are either Democrats or Republicans. Committee members are assigned in proportion to the share of each party in the overall make-up of the House or the Senate. In the Senate, for example, if the Democrats held 57 seats and the Republicans held 43 seats, the Democrats would be referred to as the majority party. A committee with 21 members would be composed of 12 Democrats and 9 Republicans, roughly equal to the 57-43 split in total seats. If five staff persons were assigned to work with the committee, three would be assigned to support the majority members, and two would be assigned to support minority members.

hearings present a range of viewpoints on the legislation, and the testimony offered informs the debate in the committee and before the full House or Senate.

Once a bill is recommended to the full House or to the Senate, House or Senate leaders determine whether the bill will actually be debated. If the bill is unlikely to pass, because of lack of support, the leadership may choose to let the bill die by not scheduling it for debate. If the bill is being pressed by the majority party, then the Speaker of the House will move to hear the bill expeditiously.²⁰

When can small businesses influence the passage of legislation? There are many opportunities, beginning before the bill is introduced and continuing through subcommittee and committee hearings and mark-ups of the bills. Once the bill has gone to the full House or Senate, small business owners can still petition members of the Congress, asking that members listen to and support the small business position. In early stages of bill development, small businesses can lobby for changes to the bill that would help small business. During the final debate before the full House or Senate, small businesses may or may not be able to lobby for amendments to improve the bill. If they are unable to lobby, all small businesses can do is ask their Senators or Representatives (depending on which house is considering the bill) to vote in accord with the opinions expressed by small business organizations.

Once a bill has been passed by both houses of the Congress, it is forwarded to a conference committee, made up of select members from both houses, to iron out differences in the versions passed by each House.²¹ This conference committee mark-up provides a final opportunity for the lobbyists representing both sides of the issue to affect the final bill. Lobbying at this stage is often intense and closely focused on the members of the conference committee, because it is rare for either house to object to the final provisions agreed to in conference.

²⁰ As might be expected, the Speaker of the House does not have absolute power over the scheduling of a particular bill. Working with the House Rules Committee, however, the Speaker does have considerable power to affect not only scheduling, but also the nature and extent of the actual debate. The Speaker of the House, as presiding official, and the House Majority Leader together can direct almost all timing issues related to a bill. If they are strongly against a piece of legislation, it is unlikely ever to reach a vote before the full House. If they strongly support a bill, it is likely to move through committee quickly and be considered before the full House at an early date.

²¹ Occasionally, the same version of a bill is passed in both houses. In this case, the final bill is forwarded directly to the President for signature. Any major bill is likely to be passed in different forms the two houses, making reconciliation necessary. By necessity, the final Conference Committee version will be a compromise between the versions passed in the House and in the Senate.

CHAPTER FOUR

OPPORTUNITIES FOR SMALL BUSINESSES TO INFLUENCE LEGISLATION: A CASE STUDY

The interaction between members of the Congress and small business owners and organizations can be explained most straightforwardly with an example. Suppose that a group of environmental activists sponsors a bill that calls for the total control of hazardous substances used by businesses in the United States. The proposed bill lists thousands of substances that are considered hazardous, and the legislation, as written, requires that each business obtain a license authorizing it to use a hazardous substance. Businesses must obtain, according to the bill, a separate license for each hazardous substance used. To ensure that each user of a hazardous substance obtains the necessary license, producers or distributors of hazardous substances will be required to notify the EPA of the name and address of each company to which a hazardous substance is shipped. Two years after the bill becomes law, no hazardous substances will be shipped until the requesting company provides the shipper with the appropriate license number.

The bill is introduced at the beginning of the legislative session, along with several thousand other bills. Organizations such as NFIB, the Chamber of Commerce, NSBU, and others note that the bill has been introduced, but take no immediate action, pending the assignment of the bill to committee. Large and small businesses that produce hazardous substances, such as specialty chemical companies, may obtain copies of the proposed legislation immediately for study. Next the proposed bill is assigned to the Committee on Interior Affairs in the House and to the Committee on Environment and Public Works in the Senate. Congressional leaders indicate that the bill is important and should receive early consideration. Both House and Senate committees immediately assign the bill to a subcommittee, the Subcommittee on Hazardous Substances in the House, and the Subcommittee on Environmental Pollution in the Senate. The House Subcommittee announces immediately that it will hold hearings at the earliest possible date, and the Senate Subcommittee announces that it will hold hearings after the House Subcommittee holds its hearings.

THE INITIAL RESPONSE TO THE ANNOUNCEMENTS

The announcement by congressional leaders and the follow-up announcements by the subcommittee chairpersons bring forth immediate reactions from a number of organizations and businesses. Environmental groups immediately declare their support for the legislation, although some groups argue that licensing is not enough, that more severe restrictions on the use of hazardous substances should be added to the bill. Large chemical companies, as both producers and users of many hazardous substances, label the bill as "overkill" introduced by groups that "don't understand the careful manner in which these substances are handled by businesses." Trade associations representing the chemical producer interests also issue public information releases. The associations begin immediate work on a strategy to combat the legislation.

What about small businesses at this point? Those small businesses, relatively few in number, that are among the producers of hazardous substances probably belong to the major chemical industry associations and are thus aware of the legislation. These small producers probably rely on the industry association to represent their interests, and do nothing initially to protect themselves.

Previous Page Blank

The many more small businesses that use hazardous substances are probably unaware that the hazardous substance control bills have been introduced or that hearings have been announced. A few businesses, perhaps 1 or 2 percent of the small businesses in the country, use hazardous substances extensively in their production process. Some of these extensive users note the press releases issued by the chemical manufacturers, and notify their industry association that this legislation may be a real problem for them. Most small businesses do not consider themselves extensive users of hazardous substances, however, and have little immediate interest in the bill.

A month after the initial announcement, the House Subcommittee on Hazardous Substances schedules two days of hearings on the proposed legislation, the first day on the nature of environmental problems associated with the use of hazardous substances, and the second day on methods for controlling hazardous substances. The subcommittee staff immediately begin to schedule witnesses for the hearing.

STRATEGIC ISSUES

Groups and businesses opposed to the legislation have a number of strategic issues to consider at this point. First, they have to consider whether they are going to oppose the bill vigorously in both the House and the Senate, or only in one of the two chambers. Second, they have to decide whether they should work vigorously at this point, or whether they should reserve their efforts for later — for example, when the bill comes before the whole committee after having been voted on affirmatively at the subcommittee level. Third, they should carefully examine the nature of the opposition they are developing.

What groups are involved at this time? Can more groups be enlisted before the subcommittee hearings? If more groups or businesses are recruited, can they obtain a place at the initial hearings? For that matter, can any of the opposing groups testify at the subcommittee hearings? What about the group that introduced the bill? Can it find allies among the other environmental groups? Can it form a broad and powerful coalition in support of the legislation? Can a business coalition be formed that can match the power of the environmental groups?

If the answer to this last question is no, then amending the legislation, rather than attempting an outright defeat, is the better strategy. If the answer is unclear, then the business lobbyists should form an effective coalition, maintaining the option to attempt to defeat the bill totally. At the same time, lobbyists should consider how the bill might be amended to minimize the cost to small business while securing the benefits sought by the proponents of the original bill.

SUBCOMMITTEE HEARINGS

Ideally, the subcommittee staff are fair-minded, and hearings include testimony from both proponents and opponents to the legislation. But the subject listed for each day's hearings indicates that most, if not all, of the hearings are to be devoted to proponents of the legislation. The chairperson of the subcommittee clearly favors the legislation and controls the majority of committee staff. The trade association lobbyists at this point look to their relationships with the minority members of the committee. If minority members of the committee appear to be strongly opposed to the legislation, these members may be asked to intervene to ensure that there is balanced representation at the hearings. The system appears to work well enough to produce some balance in the hearings, but it is unlikely that the

opponents of control will be given as much opportunity to testify as those supporting the hazardous substance control legislation.

Few small businesses are as active as large business opponents of the legislation or as producer industry associations. Probably only one or two small business organizations, NFIB or NSBU, are even tracking the proposed legislation. Many small business owners may even favor the legislation at this point, assuming (incorrectly) that they do not use hazardous substances in their business and would not be subject to the law in any event.

HOW THE EXECUTIVE BRANCH AFFECTS PROPOSED LEGISLATION

In the federal bureaucracy, two organizations have noted the proposed legislation and are preparing to take a position on it. The EPA is for the legislation for several reasons.²² The Office of Advocacy in the Small Business Administration has also noted the bill, and is prepared to testify in opposition to the bill on the general grounds that the licensing requirement will impose large paperwork burdens and costs on many small businesses.²³ Both agencies request that they be invited to testify at the hearings. Before forwarding their prepared testimony to the Congress, the directors of both agencies present their views to the Executive Office of the President. Given the conflict in their views, the President (or his senior policy advisors) must decide whether there is sufficient reason to establish a government-wide position at this point. Because this is the first hearing on the subject and because feelings on environmental issues are often strongly held, the President may decide to let both agencies testify at this point, without committing the executive branch or the President to a position.

Assuming that the subcommittee staff schedule an industry panel representing producers and large users of hazardous substances, and further assuming that both the EPA and the Chief Counsel for Advocacy are scheduled to testify, these and other witnesses prepare their testimony for the hearing.

At the same time, much organizational work is going on in the small business community, based on the assumption that the bill will not be killed at the subcommittee level. At the SBLC, several

²² The power of the EPA will be enhanced if the legislation is passed, giving the EPA a compelling argument to support additional staff and a larger budget. EPA bureaucrats are therefore biased toward supporting the proposed legislation. Political appointees in charge of the EPA have a more balanced view of the world, however, and do not favor or oppose the legislation as proposed. The EPA is certainly in favor of making the law as workable as possible, so that EPA workers can implement it effectively if it is passed.

²³ The Chief Counsel for Advocacy in the Small Business Administration represents the interests of small business before the federal government. The Counsel's staff review proposed legislation and regulations to see how they would affect small business. If the legislation is apt to impose costs on small business, the Chief Counsel may ask the Congress to consider alternative solutions that impose fewer costs on business. In this case, the Chief Counsel may not directly oppose the intent of the bill, but may question the extent to which the benefits claimed by the proponents can be supported by appropriate research or measurement. The Chief Counsel may also question whether the administrative licensing process is the most efficient way to control dangerous substances in this case. The Office of Economic Research reporting to the Chief Counsel may also initiate research to measure the effect of the proposed legislation on small businesses. This research is coordinated and shared with the EPA.

industry or trade association representatives raise their voices against the legislation. They call other members of SBLC and attempt to convince them that the issue is of great interest to many of their members, who will be strongly affected even if their businesses are only minor users of hazardous materials. One of the SBLC's arguments is that the list of proposed hazardous substances includes many cleaning compounds, compounds that are used by almost all businesses.

In preparing testimony, the Chief Counsel for Advocacy consults with numerous individual business owners and trade or industry associations.²⁴ Several groups of industry representatives are brought together to advise the Chief Counsel about the potential effects of the bill. The Chief Counsel also asks the Office of Economic Research to review the issue from an economic standpoint and provide an opinion on the relative costs and benefits flowing from the proposed legislation. If time permits, research may be directed at small businesses in specific industries to estimate how the legislation would affect them. All of this information is summarized as part of the Chief Counsel's testimony at the hearing.

INFORMING SMALL BUSINESSES

One by-product of this process is that more and more small businesses become aware of the general nature of the bill. Many of these small business owners work to involve their trade associations in resisting the bill, although mobilization takes time and has little effect on the initial hearing.

THE HEARINGS

The initial hearings are almost anticlimactic. The proponents state their strong feelings about dangers inherent in the use of hazardous substances. Listening to knowledgeable scientists, subcommittee members realize that, because hazardous substances are not controlled to the extent called for in the proposed law, the costs incurred will be exorbitant. Few studies have focused on this issue, however, and most testimony about effects is anecdotal. Witnesses testify to the damage done when hazardous materials are used improperly, or spilled, or disposed of in an inappropriate manner. Some stories are told about injuries to workers who were hurt because they did not know the substance they were working with was hazardous. Other witnesses testify that hazardous substances may be especially dangerous in the case of fire, which may release toxic or corrosive fumes into the air. Firefighters, they note, are hindered by the fact that they do not know what hazardous substances are used in a particular building.

Representatives from the large producers or from the industry associations representing the producers point out that licensing the right to use hazardous substances is not the same as guaranteeing that the materials will be used or disposed of properly. The Chief Counsel for Advocacy testifies that the licensing requirement imposes burdensome paperwork requirements on many small businesses. The Chief Counsel further points out that there are no good measurements of the bill's suggested benefits and little reason to suppose that licensing will solve problems related to improper use or disposal of hazardous substances. The Chief Counsel ends by suggesting subcommittee members might consider rewriting the bill with simpler goals in mind. Two goals seem worth noting. First, legislation should specify that

²⁴ The testimony is actually prepared by an Assistant Chief Counsel who is expert in environmental issues and hazardous substances.

hazardous materials be labeled clearly, under standards to be developed by the EPA. Second, hazardous substances found in sufficient quantity on any business property should be listed, with the list forwarded to the EPA and the local fire department.

SUBCOMMITTEE VOTE

Several weeks after the hearings are completed, subcommittee members vote to forward the legislation to the whole committee with an endorsement of the original language. Both opponents and proponents continue to clarify their positions, awaiting information on the scheduling of activity by the full committee.²⁵ Time is valuable to both sides because the initial hearings have helped both sides to clarify their arguments and assess the extent to which particular arguments are successful in influencing potential congressional votes. The passage of time has also provided some useful information about the potential strength of the coalition building on both sides. The environmentalists may be more effective coalition builders in this case, partially because they have been organized for some time to pursue issues related to the use of hazardous materials. Although some small business lobbyists have come to this conclusion, they have not yet formed a well-developed steering group for coalescing a small business coalition. Several lobbyists see the need for such a steering group, however, and begin to work at forming the steering group.

While waiting for the committee to proceed, lobbyists from NFIB, NSBU, and SBLC, working independently, meet with members of the full committee on an informal basis to discuss the general issue addressed by the bill. Specific shortcomings in the legislation are pointed out, and an attempt is made to gauge each committee member's likely position on the bill. The changes in the bill suggested by the Chief Counsel for Advocacy are brought to the committee members' attention, and the lobbyists point out that the bill, with the changes, will accomplish much of what the original proponents intended.

Each small business organization has, or works on developing, a listing of small business owners who are strong supporters or close friends of the committee members. Some of these small business owners may be asked to visit with or call their friends on the committee, to provide a more personal view of the potential damage the bill may do. These kinds of meetings and interactions will continue throughout the hearing process, independent of the actual hearings, but obviously part of an overall strategy to defeat the bill. More visits or fewer visits may be made depending on the overall schedule of the Congress, the progress of other legislation, and the lobbyists' assumptions about the probability that the bill can be defeated using other means. Influence, to be effective, must be used judiciously and timed carefully.

²⁵ I concentrate on House activity at this time. Obviously, the legislation can be moving through the Senate subcommittee and full committee on a similar schedule. This means that lobbyists attempting to affect the bill have some important strategic decisions about where to focus their opposition or support for the bill. The business lobbyists consider how many friends they have on the majority and minority sides of both committees, and the strength of the perceived support or opposition to the bill among committee members. The lobbyists also consider the extent to which their constituents are against the bill, and the rate at which opposition to the bill is growing. An analogous question relates to how fast support for the bill is growing. Lobbyists further consider what other bills are proceeding at the same time, and the relative effects of those bills compared with the effects of the hazardous substance legislation. Having the bill moving forward in both houses makes the issue more complex, but does not change the basic nature of the issue. I continue, therefore, to focus on one house only.

The path followed by the legislation, and the form of the final legislation if any legislation is actually passed, can be influenced in so many ways that numerous activities are generated on a contingency basis. Although small business lobbyists may think that they can influence enough votes by working with known supporters of the small business position, the lobbyists also know that their opponents are working equally hard to influence members of Congress. Both groups of lobbyists attempt to inform their constituents of the current position of the bill, and both ask constituents to become involved in the process by writing letters to members of Congress and taking a public position on the issue of controlling hazardous substances.

Business owners that use relatively more hazardous substances and have a stronger interest in the defeat of the bill are asked to join the coalition of business owners and business organizations seeking to defeat the bill or to minimize its impact on small business. Leadership for the coalition will be developed with a staff member from one of the major organizations taking the key administrative role and with a prominent small business person taking the role of spokesperson and formal leader of the group. The fact that the small business coalition is formed relatively quickly indicates that the issue affects a large number of small businesses, and that small business owners are fearful of the costs they may incur in meeting the intent of the law. In all likelihood, a sizable proportion of small business owners agree with the goals of the law. What the owners fear is that the law may be written poorly, thereby raising the costs small businesses will face in complying with the law.

Part of the difficulty in defending the small business position relates to the ignorance of many small business owners about the proposed legislation. This ignorance can be dispelled, given enough time, through a public information campaign. Another difficulty is that many small business owners are so tied to their businesses (the average business owner works approximately 60 hours per week) that they are reluctant to take time off to join in active opposition to the bill. Clear statements of the issue, and the consequences if the bill is passed, may help to motivate business leaders. Many small business owners also believe that they do not have hazardous substances on their premises, and refuse to become involved in the controversy, thinking the final bill will not relate to them.

FULL COMMITTEE DELIBERATIONS

There is no need to track the actual progress of the hearings before the full committee. Suffice it to say that the committee does generate more balanced testimony. Based on this testimony, a number of proposals are made to clarify or amend the original language. After the hearings, the committee marks up the bill, introducing — among other changes — some language suggested by the small business coalition. The bill is approved by the committee and forwarded to the House leadership.

PREPARING FOR THE FINAL VOTE

The small business coalition has followed every step of the committee deliberations. As soon as the committee mark-up is published, the coalition carefully reviews it. Some provisions are still unfavorable to small business, and the lobbying process continues as the bill is scheduled for debate in the House of Representatives. The process follows the lines specified earlier, but becomes even more complex at this stage. A floor manager is appointed by the House majority leadership to manage debate on the bill. The minority leadership, which also has a strong interest in the amended form of the legislation, also names a floor leader to help organize the minority position on changes that will be

suggested as amendments to the bill. Party functionaries from both parties, known as party whips, poll their members to see how the potential vote will come out. Because numerous language changes are being suggested by both sides, the bill does not appear to have enough votes to pass in its current form. Both the environmental coalition and the small business coalition work to make their viewpoints clear, particularly to those congressional representatives who were not on the original committee and who have not formed a firm opinion on the legislation. At this point a letter-writing campaign is organized by the small business coalition to make representatives aware of the broad base of businesses that are interested in the final outcome.

After 10 hours of debate, the amendments are introduced, clarified, voted on, and added to the final version of the bill. In a close vote, the House of Representatives approves the amended version of the bill.

THE CONFERENCE COMMITTEE

The Senate in the meantime has considered the bill, using a process very similar to that followed in the House. Support for environmental issues is stronger in the Senate, however, and the original version of the language is carried through to the final vote. The Senate approves the bill. Shortly after the Senate passes its version of the bill, House and Senate leaders meet to assign members to a Joint conference committee. This committee takes both versions of the bill and crafts a joint version agreeable to committee members from both the House and the Senate. The conference committee version will be a compromise, of course, and some delicate negotiating is required to obtain full agreement. The conference committee mark-up of the final version of the legislation is closely watched by both the environmentalists and the small business coalition, and both sides attempt to convince the conference committee members that the final language should be slanted toward the version that favors them. In this case, the environmentalists prefer the Senate version, which is closer to the original language, and small businesses favor the House version, which has been amended to more closely represent the approach favored by small business owners.

The mark-up proceeds in an orderly fashion, and many of the changes suggested by small business survive. The conference committee reports to the House and Senate on the final version of the bill, and the bill is passed in both houses. The bill is forwarded to the President for signature, which must be provided in 10 days unless the President vetoes the bill. The President signs the bill, and it becomes a law.

CHAPTER FIVE

SOME COMMENTS ON THE PROCESS

The length of the discussion in Chapter Four may obscure several important points about the lobbying process, and the role of small business owners and small business organizations in the process. Note that there is continuous activity throughout the legislative development process. The level of activity and the nature of the activity vary over time, and are critically dependent on the strength of the groups supporting or opposing the proposed legislation. The activities are straightforward. Small business owners and their lobbyists (particularly the lobbyists) engage in the following:

- Monitoring the entire legislative process. From the moment a bill is proposed, small business owners, trade association officials, and other lobbyists supporting small businesses track the progress of the legislator.
- Carrying out research on the issues raised by the proposed legislation. Small business owners and their organizations, with minor exceptions, may not be able to conduct much research because they lack the funds to support such work. Research is carried out by several small business organizations, however, including the Chief Counsel for Advocacy in the SBA, NFIB, and NSBU. Small business groups can also make use of research done by larger businesses, by the U.S. Chamber of Commerce, by universities, or by other public policy groups.²⁶
- Informing small business constituents, members of Congress, and the general public about the nature of the issues. If small business owners want to convince people that the proposed legislation is not in the public interest, then both the Congress and the public must be educated about the potential effects of the legislation. The more information small businesses can generate, the more they can illustrate that the legislation is unwise, or, at least, not optimal. Good information will help lead the discussion toward resolution, with the proposed bill being defeated, or amended into more appropriate form. Effective lobbying must address the issues being discussed. If lobbyists cannot move the debate forward by focusing on critical questions and by proposing believable and creditable solutions, their work will be ignored or quickly dismissed.
- Networking and coalition building. As legislation develops, small business groups seek like-minded leaders from other groups such as big business, industry and trade associations, economic development officials, federal, state, and local officials, and other

²⁶ Research will not be useful unless it is creditable. Many organizations totally lose effectiveness by doing poor research or by making claims that are not substantiated by their research. In a competitive market for ideas, the scientific basis of any research will be questioned carefully by opposing lobbyists. If the research is not creditable in a scientific sense — that is, done in a manner that meets academic and scientific standards — it will be discredited on technical grounds before anyone even looks at the findings.

interest groups to form a coalition of interests that oppose the proposed legislation.²⁷ The members of Congress respect strength, and will clearly measure the strength of the coalition that small business develops on this issue. Recent history records numerous cases in which small business owners and their lobbyists could not pull together a large enough coalition to convince Congress that the small business position should prevail.

- Developing leadership. Lobbyists working for the major small business organizations are knowledgeable on many issues, but it is unlikely that they can act as leaders on every issue. Leadership in the example discussed above emerged from the coalition-building process. Often, a small business owner with a strong interest in the proposed legislation makes an excellent spokesperson for the coalition. Few business owners have the time, however, to act as coalition managers, so this function may be accomplished instead by one of the senior managers from the major small business organizations.
- Calling and writing members of Congress. After all of the organizational work noted above, after all of the research, after preparation and delivery of testimony, after everything else, telephone calls and letters from small business constituents may be the deciding factor influencing some of the votes in the Congress. The question of when to call and when to write is critical, but the results are clear. Members of Congress appreciate an informed constituents who take the time to state their opinions about a piece of proposed legislation.

All of these activities are clear-cut. The strategic and tactical issues that must be confronted in coordinating activities are much more complex. The path of a proposed bill is not a linear, nor does it adhere to a well-defined calendar. The passage of a bill depends on many things that are totally outside the control of most of the participants. All that can be said is that the legislative process is dynamic and challenging. Small business lobbyists must constantly monitor the scheduling of activity in the Congress and constantly adjust priorities to support their small business constituents. The environmental legislation discussed above gives some idea of the complexities encountered as a bill proceeds through the Congress.

²⁷ I use the word "oppose" because small business owners are clearly opposed to the costs being imposed by the legislation discussed in this example. Clearly, small business owners also sponsor legislation, and at other times seek to build coalitions in support of a particular bill.

CHAPTER SIX

INFLUENCING THE REGULATORY PROCESS

Does the new law become effective immediately? Not quite. The broad language of the law has to be converted into rules that small businesses attempting to comply with the intent of the law can follow. The EPA has to prepare regulations defining hazardous materials, detailing the reporting process, specifying penalties for failure to comply, and answering other relevant questions. Because the final version of the law is not clear until just before the law is passed, it will take the EPA some time to draft implementing regulations.

THE ADMINISTRATIVE PROCEDURES ACT

The regulations will be prepared and published according to strict guidelines specified in the Administrative Procedures Act and in the Regulatory Flexibility Act. The Administrative Procedures Act states that the proposed regulations will be published in an initial version that will be circulated for comment by interested parties. The process will be managed by an office within the Executive Office of the President, called the Office of Information and Regulatory Affairs (OIRA). OIRA will solicit comments on the initial proposed regulation from interested parties, including many members of the small business coalition, as well as environmental groups and members of the general public. Comments received during the comment period (usually 50 days) will be forwarded to the EPA for consideration. The final version of the proposed regulations must indicate what was changed or not changed in response to comments, and provide at least some reasonable justification for not making suggested changes.

THE REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act is administered by the Office of the Chief Counsel for Advocacy in the Small Business Administration. The proposed regulations must be accompanied by an analysis of the costs imposed on small businesses (or other small administrative entities such as villages or towns), or a certification that the proposed rules do not impose a significant burden on small businesses.²⁸ If the proposed rules are burdensome, the accompanying analysis must indicate what other rules were considered, and must certify that the solution selected was the least-cost method of accomplishing the desired legislative goals. If major changes to the proposed regulations are made after receiving public comment, then a final regulatory analysis must be made.

Commenting on the proposed regulations is a simpler process than attempting to influence the final version of the law, but the regulatory process may be even more important than the law itself. Poor drafting of rules could impose large costs on literally millions of businesses, creating a drag on business productivity, and, ultimately, a decline in real welfare. Experience has shown, also, that regulations are easy to add, but more difficult to change after they have gone into effect.

²⁸ The law is not completely focused on costs. It requires that benefits also be noted and clearly identified with respect to both size and distribution among affected parties.

In the current case, the EPA has to define hazardous substances. What is hazardous in one person's view may not be hazardous in another's view. Many comments on the proposed list of hazardous substances can be expected. How much of a substance has to be in the possession of a business before the business must report the substance is also to be determined. The initial EPA regulation specifies that any amount of a substance greater than one liter (or one kilogram) must be reported.

The initial version of the proposed regulations take six months to write.²⁹ Following publication in the *Federal Register*, the public is given two months to submit comments to OIRA. The comments are forwarded to EPA, and the agency is given as much time as is necessary to prepare the final version of the regulations.

In addition to the many comments provided by individuals and by organizations, other federal agencies are allowed to comment. The Chief Counsel for Advocacy in the SBA, who commands analytic and information resources, is in a particularly favorable position to comment. In analyzing the proposed rules and the regulatory analysis submitted by the EPA, the Chief Counsel's staff focus on the amount of the substance that must be reported. A work order is placed with an environmental contractor to examine how many businesses would be affected by the proposed rule, and to examine the effect of raising the minimum amount of the hazardous substance from one liter (kilogram) to some higher amount.

The contractor's report produces two major findings. First, the proposed rule will require approximately 3 million businesses to register with the EPA. Second, if the minimum amount reported is equivalent to one barrel (a 55 gallon drum, or approximately 200 liters), only 500,000 firms will be subject to the regulation. The research findings indicate that the barrel standard will still cover approximately 98 percent of the substances identified as hazardous.³⁰ The Chief Counsel for Advocacy provides these research findings to the EPA as part of the comments filed after the initial regulations are issued. Given these research findings, EPA changes the final rule to require reporting only by firms with one barrel or more of a hazardous substance. The research done by the Chief Counsel for Advocacy in

²⁹ During this period the EPA may undertake a number of research projects to help it predict the costs and benefits generated by the law, and by the accompanying regulations. The EPA is hindered in its work, however, by the fact that the proposed rule will have such broad applicability that the EPA cannot research all of the appropriate issues. Given its relatively limited budget, the EPA is likely to focus its research on the benefit side and on the issues most closely related to defining the regulations to be issued. The EPA has shown a continuing willingness to use constructive results provided by other entities including other government agencies, producers of hazardous substances, and environmental interest groups. As usual, the work submitted by outside parties must meet high scientific standards.

³⁰ These research findings could at one time have been developed by the EPA, which formerly had an extensive research capability. The research capability of the EPA has been eroded by budget cuts, forcing the EPA to be judicious in scheduling research. The agency still has a reputation for making good use of research findings from outside sources and welcomes new information or new techniques that make its own research more useable. The Office of the Chief Counsel for Advocacy has worked closely with the EPA on a number of environmental research activities. The result has been a stronger awareness and a better measurement of the effects of proposed environmental rules on small business.

this case would probably not have been done in a timely manner without the support of federal funds.³¹ The existence of an internal advocate in the government has clearly improved the flow of creditable information flowing to the Congress and to the executive agencies that regulate small businesses. The improved information flow has helped improve or eliminate numerous regulations.

³¹ These funds may have been in the EPA budget, as well as in the Small Business Administration budget. Many outside observers have noted that the Congress in recent years has passed significant regulatory legislation without answering the benefit and cost questions during the Congressional debate, and without providing funds in federal agency budgets to allow for follow-up research to answer the questions. The result, as might be expected, is that some regulatory legislation has led to unexpected costs and to costs that outweigh benefits in many situations.

CHAPTER SEVEN

CONCLUSIONS

The process of creating a law and preparing implementing regulations may take as long as three or four years. Small businesses are not as well organized as many of the groups that recommend laws that have major impacts on small business. In recent years, however, a number of small business organizations have been developed to provide oversight over the legislative and regulatory processes. The process of making law is flexible, as are the methods used by small businesses and their allies in attempting to influence the shape of the final law, or even whether the law will be passed in any form. The work of private small business organizations has been augmented by the advocacy and research prepared by the Office of the Chief Counsel for Advocacy in the SBA. As the private sector groups gain strength, however, the need for an internal (government) advocate appears to diminish.

REGULATORY CAPTURE

Small businesses may find themselves particularly disadvantaged when the regulation of an industry has been in place for an extended period of time. Close relationships between the regulatory bureaucrats and the businesses being regulated may lead to capture of the regulators by the businesses being regulated.³² Captured regulators appear to pay close attention to the interests of the regulated businesses, forgetting that they have a broader legal mandate to protect the interests of the general public. When this broad mandate is ignored, the damage done to the general welfare can be very large. In the recent savings and loan crisis in the United States, for example, it appears that regulators became very close to the savings and loan officials they were regulating. The Federal Home Loan Bank Board, the regulatory agency in this case, appeared to place survival of poorly managed savings and loans above the fiduciary responsibility to protect the deposits in troubled savings and loans. As a consequence, depositors (and taxpayers) are being required to expend more than \$400 billion to clean up the resulting mess.

The lessons to be learned from this discussion seem clear. Small business owners must take some actions to protect their interests before federal, state, and local governments.³³ These actions include becoming informed about representative organizations, joining them, and supporting their activities. Taking action means being willing to step forward, at least occasionally, as a leader on an issue. It

³² The process may actually involve a trio of players including not only the regulators and the firms being regulated, but also members of the Congress, especially members on the committee having oversight over the industry being regulated. This trio of interests is often called The Iron Triangle to highlight the strength of the coalition and the fact that it often loses sight of the general public interest, focusing only on the narrow interests of the industry.

³³ We have used a federal example in this paper, but state legislation is similar. Cities and other local administrative entities may differ from higher-level governments with respect to the types of regulation favored, but the general lobbying process does not change much. At the local level, access to legislators may be more direct, conflicts may be resolved more quickly, and within the context of existing law.

means becoming educated on issues and being informed on potential laws that may affect one's business and welfare. Those business owners that are not active in protecting their interests may try to act as free riders, counting on other business people to provide the active participation in the legislative and regulatory process. If the free ride does not work, however, there is no one to complain to — and no one who will come to the rescue of the nonparticipating business. Active participation in business organizations helps each business by providing a better legal and regulatory climate for business over time.

SPECIAL TREATMENT

The regulatory and business climate will not be better, however, if small business organizations lobby not just for legitimate issues, but for special treatment or reduced competition. This currying of special favors from the government can be quite appealing to small businesses that feel continuous competitive pressure from other businesses both large and small. At the state level, for example, small businesses in many industries ask state legislators to restrict the entry of additional firms into the industry. Firms in an industry may also ask state or local officials to restrict hours of operation. This restriction does not serve the interests of consumers, but it does keep other, more competitive businesses from providing additional services by extending their hours of operation. States are often asked to provide special licensing for businesses. The argument is made that this legislation protects consumers, but an examination of the effects in many cases shows that the main intent is to close the market or restrict entry to the marketplace.

Self-pleading (asking for special favors) by small business organizations occurs frequently enough that government advocates for small business must stay aware of this possibility. Most advocates will find that there are enough legitimate issues to be advocated that these less-than-legitimate issues can be ignored, but intense political pressure may be exerted to convince the advocate to back legislation that restricts competition or shifts income from consumers or other businesses. Lobbyists may minimize these occurrences by highlighting their respect for open and competitive markets, but this position will not please all constituents.

Lobbying by small businesses can effectively support legitimate small business interests that are threatened by special interest group legislation or by legislation that is poorly thought out or poorly implemented. Lobbying can also focus on special interest legislation that favors some small businesses at the expense of other businesses or at the expense of consumers. Advocates must examine each issue on its merits and focus on those issues that strengthen the market system.